INDEX

I. The use of violence to force an employer engaged in interstate commerce to consent to higher union wages is extortionate conduct proscribed by the Hobbs Act ..... Page 2

II. New York case law, construing the state extortion statute, does not suggest any basis for dismissal of the indictment in the present case 7

III. Section 602 of the Labor-Management Reporting and Disclosure Act is consistent with the construction of the Hobbs Act urged by the government 11

Conclusion 14

CITATIONS

Cases:

American Federation of Labor v. *Swing*, 312 U.S. 321 13

Bianchi v. *United States*, 219 F. 2d 182, certiorari denied, 349 U.S. 915 12

Callanan v. *United States*, 223 F. 2d. 171, certiorari denied, 350 U.S. 862 12

Hulahan v. *United States*, 214 F. 2d 441 14

Milk Wagon Drivers Union of Chicago v. *Meadowmoor Dairies*, 312 U.S. 287 5

National Labor Relations Board v. *Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U.S. 58 13

People v. *Adelstein*, 9 App. Div. 2d 907, 195 N.Y.S. 2d 27 8

489-929—72——1

Cases—Continued

	Page
People v. *Barondess*, 133 N.Y. 649, 31 N.E. 240	8
People v. *Beggs*, 178 Cal. 79, 172 Pac. 152	10
People v. *Cuddihy*, 151 Misc. 318, 271 N.Y.S. 450, affirmed, 243 App. Div. 694, 277 N.Y.S. 960	8
People v. *Conforti*, 72 N.Y.S. 2d 458	10
People v. *Dioguardi*, 8 N.Y. 2d 260, 168 N.E. 2d 683	8
People v. *Gassman*, 182 Misc. 878, 45 N.Y.S. 2d 709, affirmed, 268 App. Div. 377, 51 N.Y.S. 2d 173, affirmed, 295 N.Y. 254, 66 N.E. 2d 705	9
People v. *Kaplan*, 240 App. Div. 72, 269 N.Y.S. 161, affirmed, 264 N.Y. 675, 191 N.E. 621	7
People v. *Maranian*, 359 Mich. 361, 102 N.W. 2d 568	10
People v. *Sheridan*, 186 App. Div. 211, 174 N.Y.S. 327	8
People v. *Weinseimer*, 117 App. Div. 603, 102 N.Y.S. 579	8
Sherin, In re, 27 S.D. 232, 130 N.W. 761	10
State v. *Phillips*, 62 Idaho 656, 115 Pac. 2d 418	10
State v. *Richards*, 97 Wash. 587, 167 Pac. 47	10
United States v. *Bonnano*, C.A. 9, Nos. 72–1779 and 72–1780, decided Sept. 14, 1972	6
United States v. *Caldes and Lowery*, 457 F. 2d 74	11
United States v. *Green*, 350 U.S. 419	2, 5, 13, 14
United States v. *Kramer*, 355 F. 2d 891, certiorari granted and cause remanded for resentencing, but otherwise certiorari denied, 384 U.S. 100	12
United States v. *Local 807*, 315 U.S. 521	4, 5, 6

Statutes:

	Page
Consumer Protection Act of 1970, 18 U.S.C. 891	6
Hobbs Act:	
18 U.S.C. 1951(b)	1, 2, 3, 6
18 U.S.C. 1951(c)	11, 13
Labor-Management Reporting and Disclosure Act, Sec. 602, 73 Stat. 539, 29 U.S.C. 522	11
National Labor Relations Act, Secs. 7, 8(b), 29 U.S.C. 157, 158(b)	13
California Penal Code, Sec. 518	10
Donnally Act, N.Y. Bus. Law, Sec. 340	9
New York Penal Code (1909):	
Sec. 530	7
Sec. 850	7
Sec. 851	8
Miscellaneous:	
89 Cong. Rec. 3217 (remarks of Rep. Hobbs)	4
91 Cong. Rec. 11844 (remarks of Rep. Robsion)	3
91 Cong. Rec. 11900 (remarks of Rep. Hobbs)	7
91 Cong. Rec. 11910 (remarks of Rep. Robsion and Rep. Springer)	10
91 Cong. Rec. 11913 (remarks of Rep. Whittington)	14
105 Cong. Rec. 6430, 7631 (remarks of Sen. Goldwater)	12
105 Cong. Rec. 6530 (remarks of Sen. J. F. Kennedy)	12
Hearings Before Subcommittee No. 3 of the House Committee on the Judiciary, on H.R. 5218, H.R. 6752 and H.R. 6872, 77th Cong., 2d Sess., pp. 213, 227 (1942)	7

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 71-1193

UNITED STATES OF AMERICA, APPELLANT

v.

TRAVIS PAUL EMMONS, JACKIE J. BENDO, ED WAYNE BARTON, AND MILTON RAY WOODWARD

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA

REPLY BRIEF FOR THE UNITED STATES

As set forth in our main brief, the Hobbs Act defines "extortion" to mean "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear * * *" (18 U.S.C. 1951(b)(2)). This language is not ambiguous. It covers any situation where a person, by "wrongful" means, induces someone to consent to surrender "property" to him. No distinction is drawn on the basis of the circumstances, or the nature of the property obtained; nor does it matter whether the property surrendered

actually belongs to the one induced to give his consent.[1]

I. THE USE OF VIOLENCE TO FORCE AN EMPLOYER ENGAGED IN INTERSTATE COMMERCE TO CONSENT TO HIGHER UNION WAGES IS EXTORTIONATE CONDUCT PROSCRIBED BY THE HOBBS ACT

A. Appellees seek to engraft onto the statutory defintion a limitation that would restrict the Act's coverage *only* to persons who, by wrongful use of force, violence or fear, induce another to give to them property *that they could not have otherwise obtained from the victim lawfully.* Thus they contend that, quite apart from the means employed, there must be a "felonious misappropriation of property" (Br. p. 16), or an *"unlawful* taking" (Br. p. 21, emphasis in original), to make out an offense of extortion under the Hobbs Act. The argument, as we understand it, apparently is that the federal statute can never reach and punish the proscribed activity if that activity is aimed at achieving an otherwise "legitimate" end, notwithstanding the use of "wrongful" means and a clear interference with interstate commerce.

There is no support for appellees' position in the plain language of the Hobbs Act. The statutory definition speaks only in terms of the "wrongful use" of

[1] Appellees advisedly do not argue that the "higher wages and other monetary benefits" referred to in the indictment (App. C, p. 14a) are excluded from the statutory term "property." While that was the position of the district court (App. A, p. 9a), this Court recognized in *United States* v. *Green*, 350 U.S. 415, that wages enjoyed no such exemption. And see our main brief at pp. 9–10.

prohibited *means*, without regard to whether the desired *end*—*i.e.*, "the obtaining of property"—is or is not itself "wrongful."[2] As we have shown in our main brief (pp. 13–19), the legislative history of the Act indicates that the broad sweep of the language was intentional. The debates on the floor of the House make it abundantly clear that the new legislation is not to "apply to labor unions alone," but is to have equal application "to any group of men that are interfering with interstate commerce, whether they be labor unions, farm organizations, or anybody else." 91 Cong. Rec. 11844 (remarks of Rep. Robsion). Just as members of organized crime, for example, violate the "extortion" provision of the Hobbs Act when they resort to wrongful use of force or violence to obtain a portion of another's interstate business[3]—a wholly legitimate end if accomplished through negotiation or competition—so, too, Congress made it a Hobbs Act violation for members of labor unions to use such tactics, as distinguished from lawful collective bargaining negotiations, to obtain a "contract * * * calling for higher wages and other monetary benefits" (App. C, p. 14a). Congressman Hobbs, the

[2] In this regard, compare the definition of "robbery" in the Act (18 U.S.C. 1951(b)(1); emphasis added):

(1) The term "robbery" means the *unlawful taking or obtaining of personal property* from the person or in the presence of another, against his will, by means of actual or threatened force, or violence, or fear of injury, immediate or future, to his person or property, or property in his custody or possession, or the person or property of a relative or member of his family or of anyone in his company at the time of the taking or obtaining.

[3] See cases discussed at pp. 12–13 of our main brief.

chief proponent of the legislation, stated (89 Cong. Rec. 3217): "This bill is grounded on the bedrock principle that * * * extortion [is] extortion, whether or not the perpetrator has a union card."

B. It is, of course, agreed that this legislation was enacted in response to the decision in *United States* v. *Local 807*, 315 U.S. 521, which involved an application of the Anti-Racketeering Act of 1934 in the context of an effort to obtain, by threat of violence, payments for superfluous and unwanted services. But, contrary to appellees' assertion, what concerned Congress most about *Local 807* was not the particular facts of that case, but rather the sweep of the majority opinion. See 315 U.S. at 535. The Court there—as indeed appellees urge be done here—looked solely to "*the objective* that these defendants sought to attain by the use of force and threats * * *" (315 U.S. at 533; emphasis added); if the objective was permissible under the exclusionary provision of Section 2(a)—*i.e.*, to obtain "the payment of wages by a bona-fide employer to a bona-fide employee"—then that was held to justify the means (315 U.S. at 537).

This is precisely the result that Congress sought to defeat by enacting the Hobbs Act. Its response to *Local 807* was not a narrow one directed only to the facts of that case. Congress did not, for example, merely redefine the term "bona fide employee" in the predecessor statute to remove from the exemption in the 1934 Act persons seeking payment for "superfluous" or "unwanted" services. Nor did Congress focus simply on the word "wages" and rewrite the statute so as to except from that term the type of

payments extracted in *Local 807*. And, as pointed out in our main brief (pp. 16–18), the legislators similarly rejected efforts to amend the questioned provision by bringing within the coverage of the Anti-Racketeering Act only payments made in response to force or violence, leaving otherwise intact the Section 2(a) exemption for "the payment of wages by a bona-fide employer to a bona-fide employee." Instead, as this Court observed in *United States* v. *Green, supra,* 350 U.S. at 419, Congress enacted the new legislation in broad terms "to eliminate any grounds for future judicial conclusions that Congress did not intend to cover the employer-employee relationship. The words were defined to avoid any misunderstanding." And the statutory definition of the term "extortion" contemplates no exemption for labor, or anyone else, on the ground that the "property" sought to be obtained by "wrongful" means could have otherwise been sought in a manner that would not have offended the statute, such as by peaceful collective bargaining.

C. Of course, the Hobbs Act does not punish union *demands* for higher wages. As appellees point out (Br. pp. 20–21, 25), Congress did not intend to go that far. But when the union "demands" are accompanied by the "wrongful use of force, violence or fear," those demands cease to be legitimate labor activity and become extortionate conduct within the meaning of the statute. Cf. *Milk Wagon Drivers Union of Chicago* v. *Meadowmoor Dairies,* 312 U.S. 287, 294. Moreover, resort to such conduct—especially the type of conduct charged in the present indictment—to obtain "higher

489-929—72——2

wages and other monetary benefits" (App. C, p. 14a), clearly constitutes an attempted "felonious misappropriation of another's property" (Appellees' Br. p. 16). The defendants here have no *right* to the increased payments that are the subject of contract negotiations, even if their services are both wanted and needed.[4] The money they seek to obtain is, as explained in our main brief at pp. 9–10, unquestionably the "property" of their employer. To use felonious means to force his consent to pay that money to them is as much an impermissible "misappropriation" of the employer's property when the perpetrators intend to render wanted services as it is when they have no such intention. Appellees' argument to the contrary suffers the very defect that caused Chief Justice Stone to dissent in *Local 807*, and that prompted Congress to enact the Hobbs Act; it makes the defendants' "willingness to work the test of guilt, regardless of the intended and actual effect of the violence on the victims in compelling them to pay the money not as wages but in order to secure immunity from assault" (315 U.S. at 543; Stone, C.J., dissenting).

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[4] Even assuming *arguendo* that such a claim of right could be asserted—as, for example, if the money sought was part of an overdue debt which the victim owed to the defendants—the defendants could not use the same means as are involved here to obtain payment of the debt without violating the extortion provision of the Hobbs Act. Compare the Consumer Protection Act of 1970, 18 U.S.C. 891–894, which punishes as a felony the use of "extortionate means" to collect any extension of credit, including valid and just debts. Cf. *United States v. Bonnano*, C.A. 9, Nos. 72–1779 and 72–1780, decided September 14, 1972, slip op. 3–4. And see n. 8, *infra*.

II. NEW YORK CASE LAW, CONSTRUING THE STATE EXTORTION STATUTE, DOES NOT SUGGEST ANY BASIS FOR DISMISSAL OF THE INDICTMENT IN THE PRESENT CASE

The state court decisions construing the similar New York extortion statute, on which appellees place heavy reliance (Br. pp. 37–40), do not support the narrow construction of the Hobbs Act that they urge here.[5] Those cases all involved a question not presented on the dismissal of the indictment in the present case—whether the means used to obtain the property, which in those cases was alleged to be "wrongful use of *fear*," was sufficient to establish a

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[5] There is no dispute that the definition of extortion in the federal statute was "copied from the New York Code substantially." 91 Cong. Rec. 11900 (remarks of Rep. Hobbs.) N.Y. Penal Code, Sec. 850 (1909), which was then in effect, defined "extortion" as "the obtaining of property from another, with his consent, induced by wrongful use of force, violence or fear * * *."

Appellees claim that, because New York law at the time of the Hobbs Act punished as a misdemeanor the actual or threatened violence to obtain an improved union contract (N.Y. Penal Code, Sec. 530 (1909)), the federal statute could not make the same conduct a felony. While it is doubtful that this case, had it arisen in New York prior to the Hobbs Act, would have been prosecuted under Section 530 of the New York law, rather than Section 850 (compare *People* v. *Kaplan*, 240 App. Div. 72, 269 N.Y.S. 161 (N.Y. Sup. Ct.), affirmed, 264 N.Y. 675, 191 N.E. 621 (N.Y.C.A.)), appellees point is in any event not well taken. Congress can properly choose to punish as a felony conduct which the New York legislature chose to treat only as a misdemeanor. Both New York statutes were considered by Congress and the felony provision was followed. See Hearings Before Subcommittee No. 3, of the House Committee on the Judiciary, on H.R. 5218, H.R. 6752 and H.R. 6872, 77th Cong., 2d Sess., pp. 213–214, 227 (1942).

"felonious intent" (Appellees' Br. p. 38). Under the New York law, as distinguished from the Hobbs Act, it was provided that fear, to constitute extortion, may be induced by a threat to do an "unlawful injury to the person or property" (N.Y. Penal Code, Sec. 851 (1909)). The controversy in most of the New York cases cited by appellees was whether, as a factual matter, it could be said that the threats to injure property were "unlawful" in that they were made with the requisite criminal intent.* As stated in *People* v. *Sheridan,* 186 App. Div. 211, 213, 174 N.Y.S. 327, 329 (N.Y. Sup. Ct.), "[t]he unlawfulness lies in the motive." Thus, "* * * the intent of the defendant to do an unlawful injury to the complainant's property was one of the essential elements of the crime." *People* v. *Weinseimer,* 117

* *People* v. *Cuddihy*, 151 Misc. 318, 324, 271 N.Y.S. 450 (Ct. Gen. Sess.), affirmed, 243 App. Div. 694, 277 N.Y. S. 960 (N.Y. Sup. Ct.), involved a threat by an employer to fire an employee if he refused to pay back a certain portion of his wages as the employee had agreed to do by pre-employment agreement. *People* v. *Sheridan*, 186 App. Div. 211, 213, 174 N.Y.S. 327 (N.Y. Sup. Ct.), involved a threat by an elevator inspector to report an alleged defect in an elevator if he was not paid $50. *People* v. *Weinseimer*, 117 App. Div. 603, 616, 102 N.Y.S. 579, 588 (N.Y. Sup. Ct.), and *People* v. *Barondess*, 133 N.Y. 649, 31 N.E. 240 (N.Y.C.A.), both involved threats by union officials to keep their men on strike, if they were not paid a sum of money. *People* v. *Dioguardi*, 8 N.Y. 2d 260, 168 N.E. 2d 683 (N.Y.C.A.), and *People* v. *Adelstein*, 9 App. Div. 2d 907, 195 N.Y.S. 2d 27 (N.Y. Sup. Ct.), both involved threats by union officials to have the victim's place of business picketed if sums of money were not paid.

App. Div. 603, 616, 102 N.Y.S. 579, 588 (N.Y. Sup. Ct.).[7]

We, of course, do not argue in this case that the defendants' "intent" to extort property is irrelevant to a criminal prosecution under the Hobbs Act. But, as even the New York cases cited by appellees make clear, the question of intent is a factual matter to be resolved in the first instance by the jury; it cannot serve as a basis for dismissal of the indictment.

To the extent that the New York cases are at all relevant here, we believe that they essentially support our position. Each concerned the question whether the *means* employed—in those cases, "fear" by threats of injury to property—were "wrongful" because the intended result was to coerce another to consent to surrender his property. That, we submit, is the proper inquiry under the Hobbs Act, and an affirmative response by the jury to that question would, if supported by the evidence, establish "extortion" within the meaning of the federal statute just as it

[7] Appellees' reliance on *People* v. *Gassman*, 182 Misc. 878, 45 N.Y.S. 2d 709 (Ct. Gen. Sess.), affirmed, 268 App. Div. 377, 51 N.Y.S. 2d 173 (N.Y. Sup. Ct.), affirmed, 295 N.Y. 254, 66 N.E. 2d 705 (N.Y.C.A.), is wholly misplaced. That case involved a prosecution for restraint of trade under the Donnally Act, N.Y. Bus. Law Sec. 340, which specifically excepts *bona fide* labor unions from prosecutions (in that case, independent laundry drivers, who were associated in dealing with the laundries under a closed-shop agreement). The essential question was whether or not the association was actually a union so as to be exempted.

would under similar state statutes.* As the California Supreme Court stated in *People* v. *Beggs,* 178 Cal. 79, 84, 172 Pac. 152, 154, in discussing the California extortion statute, Cal. Penal Code, Sec. 518, which is in all relevant respects identical to the Hobbs Act:

> [I]t is the means employed which the law denounces, and though the purpose may be to collect a just indebtedness * * * it is nevertheless within the statutory inhibition. * * * Hence * * * the fact that the end accomplished by such means is rightful, cannot avail one as a defense in such prosecution, any more than such facts would constitute a defense where one compels payment of a just debt by the threat to do an unlawful injury to the person of his debtor.

Congress intended that the Hobbs Act be read in the same way. As clearly revealed in a colloquy between Congressman Robsion and Congressman Springer, "the definition of robbery and extortion put in this bill [the Hobbs Act] is that followed by the codes and statutes generally throughout the Nation, in all the jurisdictions of the various States" (91 Cong. Rec. 11910).

Appellees suggest that this focus on the *means* employed, rather than on the objective, renders the federal

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* See, *e.g.*, *In re Sherin*, 27 S.D. 232, 130 N.W. 761 (S.D. Sup. Ct.); *State* v. *Phillips*, 62 Idaho 656, 115 P. 2d 418 (Idaho Sup. Ct.). It is generally recognized, for example, that the use of threats of violence for purposes of collecting a valid and enforceable debt constitutes extortion. See, *e.g.*, *People* v. *Maranian*, 359 Mich. 361, 102 N.W. 2d 568 (Mich. Sup. Ct.); *State* v. *Richards*, 97 Wash. 587, 167 Pac. 47 (Wash. Sup. Ct.); cf. *People* v. *Conforti*, 72 N.Y.S. 2d 458 (Kings Cty. Ct.). And see n. 4, *supra.*

statute impermissibly vague. The point is not well taken. The Hobbs Act punishes persons who interfere with interstate commerce by obtaining, or seeking to obtain, property by the "wrongful use" of force or violence. It expressly excludes from its reach labor activity that is legitimate under various labor statutes. See Section 2(c) of the Act, 18 U.S.C. 1951(c); and see discussion *infra*, pp. 12–13. Whether, apart from the protected activity under Section 2(c), the alleged violent or threatening conduct violates the extortion provision of the federal statute turns, as with all other criminal statutes, on the matter of criminal intent. If the jury can reasonably infer from the facts presented that the conduct was intended to force the victim to pay money in response to threatened or actual violence, and was not merely "the by-product of frustration engendered by a prolonged, bona fide collective bargaining negotiation * * *" (*United States* v. *Caldes and Lowery*, 457 F. 2d 74, 78 (C.A. 9)), it can properly return a guilty verdict. There was no cause in this case to dismiss the indictment and thus deprive the jury of the opportunity to make that determination.

III. SECTION 602 OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT IS CONSISTENT WITH THE CONSTRUCTION OF THE HOBBS ACT URGED BY THE GOVERNMENT

Finally, contrary to appellees' submission (Br. pp. 41–47), there is nothing in Section 602 of the Labor-Management Reporting and Disclosure Act that conflicts with our reading of the Hobbs Act. Section 602 prohibits "shake down" or "extortionate" picketing—that is, picketing solely for the illicit purpose of ob-

taining from the employer a personal pay-off to withdraw the picket lines.[9] But so, too, does such activity constitute a "wrongful use of ~~force~~ fear" within the extortion provision of the Hobbs Act, which is precisely why Congress amended the penalty provision of Section 602 to bring it into line with the earlier criminal extortion statute.[10]

On the other hand, neither Act proscribes peaceful picketing for higher wages. Just as such activity is exempted by express parenthetical exclusion from Section 602 coverage, it is likewise removed from the

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[9] The provision makes it a felony, punishable by a maximum fine of $10,000, or up to twenty years imprisonment, or both, "to carry on picketing on or about the premises of any employer for the purpose of, or as part of any conspiracy or in furtherance of any plan or purpose for, the personal profit or enrichment of any individual (except a bona fide increase in wages or other employee benefits) by taking or obtaining any money or other thing of value from such employer against his will or with his consent." 73 Stat. 539, 29 U.S.C. 522.

[10] See 105 Cong. Rec. 6530 (remarks of Sen. John F. Kennedy); 105 Cong. Rec. 6430, 7631 (remarks of Sen. Goldwater). Appellees acknowledge that the Hobbs Act can properly reach such activity. See, *e.g.*, *United States* v. *Kramer*, 355 F. 2d 891 (C.A. 7), certiorari granted and cause remanded for resentencing, but otherwise certiorari denied, 384 U.S. 100; *Bianchi* v. *United States*, 219 F. 2d 182 (C.A. 8), certiorari denied, 349 U.S. 915; *Callanan* v. *United States*, 223 F. 2d, 171 (C.A. 8), certiorari denied, 350 U.S. 862.

In cases like *Bianchi* and *Callanan*, where the means employed are on the surface the usual collective bargaining weapons, including the use of fear of economic loss caused by the threat of a strike, there can be a "wrongful" use of ~~force~~ fear to exact payments within the condemnation of the Hobbs Act only if the objective is illegal. Force and violence and threats thereof, on the other hand, are plainly "wrongful" absent a showing of justification, and neither the Hobbs Act nor any other federal statute affords protection for such conduct, whatever might be the perpetrators' objective.

reach of the Hobbs Act by the savings clause of Section 2(c), 18 U.S.C. 1951(c), relating to labor statutes already in force that protect legitimate strike methods to obtain higher wages.[11] Although Congress recognized peaceful economic picketing as a permissible use of power by employees, it does not follow, as appellees urge, that the legislature intended in the Hobbs Act to sweep within the protection of legitimate labor activity in Section 2(c) the type of violence charged here, simply because the objective was to obtain "higher wages and other monetary benefits" (App. C, p. 14a). As this Court observed in *United States* v. *Green, supra,* 350 U.S. at 420, nothing in any of the labor statutes mentioned in Section 2(c) "indicates any protection for unions or their officials in attempts to get personal property through threats of force or violence. These are not legitimate means for improving labor conditions." [12]

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[11] Section 2(c) provides that the Hobbs Act shall not be construed to repeal, modify or affect, *inter alia*, sections 7 and 8(b) of the National Labor Relations Act, 29 U.S.C. 157 and 158(b). Those sections recognize as legitimate labor activity economic strikes that are free from actual or threatened violence. Indeed, such a peaceful expression by employees generally enjoys constitutional protection. See, *e.g.*, *National Labor Relations Board* v. *Fruit & Vegetable Packers & Warehousemen, Local 760*, 377 U.S. 58, 77–80 (Black, J. concurring). But even in upholding a union's right to picket, this Court has recognized that peaceful labor union activity "when blended with violence, may have a significance which neutralizes the constitutional immunity which such acts would have in isolation." *American Federation of Labor* v. *Swing*, 312 U.S. 321, 323.

[12] Appellees assert that an application of the Hobbs Act in the present context "would mark a major federal encroachment upon a traditional state domain" (Br. p. 60). This argument is unsound. As we have already shown (p. 10, *supra*), Congress

CONCLUSION

For the reasons stated herein and in our main brief, it is respectfully submitted that the judgment of the district court should be reversed and the indictment reinstated.

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was fully aware that many states had extortion statutes containing language similar to that used in the Hobbs Act. It made the considered judgment that federal legislation in the same area, which pertained as fully to labor unions as to all others (see pp. 3–4, *supra*), was needed to prevent "physical violences by members of labor unions on those engaged in interstate commerce." 91 Cong. Rec. 11913 (Remarks of Congressman Whittington). Enactment of the Hobbs Act to achieve that end is plainly a valid exercise of the commerce power. See *United States* v. *Green*, *supra*, 350 U.S. at 421; *Hulahan* v. *United States*, 214 F. 2d 441 (C.A. 8).

U.S. GOVERNMENT PRINTING OFFICE: 1972